

1 Lori A. Guner, SBN 031646  
 2 FISHER & PHILLIPS LLP  
 3 3200 N. Central Avenue, Suite 1550  
 4 Phoenix, Arizona 85012-2487  
 5 Telephone: (602) 281-3400  
 6 Fax: (602) 281-3401  
 lguner@fisherphillips.com  
 Attorneys for Defendants  
 VH Harvesting LLC and Preston Van Hofwegen

7 **UNITED STATES DISTRICT COURT**  
 8 **DISTRICT OF ARIZONA**

9 Martin J. Walsh, Secretary of Labor, United  
 10 States Department of Labor,

11 Plaintiff,

12 v.

13 VH Harvesting, an Arizona LLC; T&K  
 14 Feeds, Inc., an Arizona corporation; Preston  
 15 Van Hofwegen, an individual,

16 Defendants.

17 No. 2:22-cv-01805-DJH

18 **DEFENDANTS VH HARVESTING,  
 19 AN ARIZONA LLC, AND PRESTON  
 20 VAN HOFWEGEN'S ANSWER AND  
 21 AFFIRMATIVE DEFENSES**

22 Defendants VH HARVESTING, an Arizona limited liability company, and  
 23 PRESTON VAN HOFWEGEN, by their attorneys, for their answer and affirmative  
 24 defenses to the Complaint (Doc. 1) seeking an injunction, state as follows:

25 1. In response to Paragraph 1 of the Complaint, Defendants admit Martin J.  
 26 Walsh is the Secretary of Labor.

27 2. In response to Paragraph 2 of the Complaint, Defendants admit the  
 28 allegations contained therein.

29 3. In response to Paragraph 3 of the Complaint, Defendants admit the  
 30 allegations contained therein.

31 4. In response to Paragraph 4 of the Complaint, Defendants are not related to  
 32 Defendant T&K Feeds, Inc., and are therefore without sufficient information or

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knowledge to form a belief as to the truth of the allegations contained in said paragraph and on that basis deny each and every allegation set forth in that paragraph.

5. In response to Paragraph 5 of the Complaint, Defendants admit this Court has jurisdiction over this matter.

6. In response to Paragraph 6 of the Complaint, Defendants admit venue is proper.

7. In response to Paragraph 7 of the Complaint, Defendant VH Harvesting admits it petitioned for H-2A guestworkers but denies the remainder of the allegations contained therein.

8. In response to Paragraph 8 of the Complaint, Defendants deny the allegations contained therein.

9. In response to Paragraph 9 of the Complaint, Defendants deny the allegations contained therein.

10. In response to Paragraph 10 of the Complaint, Defendants deny the allegations contained therein.

11. In response to Paragraph 11 of the Complaint, Defendants deny the allegations contained therein.

12. In response to Paragraph 12 of the Complaint, Defendants deny the allegations contained therein.

13. In response to Paragraph 13 of the Complaint, Defendants deny the allegations contained therein.

14. In response to Paragraph 14 of the Complaint, Defendants deny the allegations contained therein.

#### **AFFIRMATIVE DEFENSES**

By way of affirmative defenses to the allegations of the Complaint herein, Defendant alleges as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

1. As a first, separate and distinct affirmative defense to the Complaint, and

1 each cause of action therein, Defendants allege that Plaintiff has not suffered any losses,  
 2 and Defendants have not been unjustly enriched as a result of any action or inaction, if  
 3 any, by Defendants or its agents.

4 **SECOND AFFIRMATIVE DEFENSE**

5 2. As a second, separate and distinct affirmative defense to the Complaint,  
 6 and each cause of action therein, Defendants allege that an unexpected event or  
 7 occurrence happened which frustrated the purpose of the H-2A contract at issue.

8 **THIRD AFFIRMATIVE DEFENSE**

9 3. As a third, separate, and distinct affirmative defense to the Complaint, and  
 10 each cause of action therein, Defendants allege that Plaintiff is seeking to recover more  
 11 than they are entitled to in this matter, and the award of judgement would unjustly  
 12 enrich Plaintiff.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 4. As a fourth, separate, and distinct affirmative defense to the Complaint,  
 15 and each cause of action therein, Defendants allege that the relief sought in the  
 16 Complaint has already been satisfied.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 5. As a fifth, separate, and distinct affirmative defense to the Complaint, and  
 19 each cause of action therein, Defendants assert they substantially complied with the  
 20 Contract.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 6. As a sixth, separate, and distinct affirmative defense to the Complaint, and  
 23 each cause of action therein, Defendants allege that Plaintiff failed to mitigate damages.

24 **Wherefore**, these answering Defendants pray as follows:

25 1. That Plaintiff take nothing by way of his Complaint for damages;  
 26 2. That Plaintiff's Complaint herein be dismissed in its entirety with  
 27 prejudice;

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3. That Defendants recover their costs of suit herein, including their reasonable attorneys' fees; and

4. That the court award such other and further relief as it deems appropriate.

DATED this 10th day of November 2022.

## FISHER & PHILLIPS LLP

By s/ Lori A. Guner

Lori A. Guner

3200 N. Central Avenue, Suite 1550

Phoenix, Arizona 85012-2487

Attorneys for Defendants VH Harvesting  
and Preston Van Hofwegen

**FISHER & PHILLIPS LLP**  
3200 N. Central Avenue, Suite 1550  
Phoenix, Arizona 85012-2487  
(602) 281-3400

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Marc A. Pilotin  
Boris Orlov  
Charles Song  
Victoria Yee  
**UNITED STATES DEPARTMENT OF LABOR**  
350 S. Figueroa Street, Suite 370  
Los Angeles, CA 90071-1202

[Song.charles.c@doj.gov](mailto:Song.charles.c@doj.gov)  
Attorneys for Plaintiff Martin J. Walsh,  
Secretary of Labor

Julie A. Pace  
David A. Selden  
Heidi Nunn-Gilman  
MESSNER REEVES, LLP  
7250 North 16<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85020  
[jpace@messner.com](mailto:jpace@messner.com)  
[dselden@messner.com](mailto:dselden@messner.com)  
[hgilman@messner.com](mailto:hgilman@messner.com)

Attorneys for Defendant T&K Feeds, Inc.

/s/ *Kathy Meyer*